

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SRI INTERNATIONAL, INC., a California
Corporation,

Plaintiff and
Counterclaim-Defendant,

v.

INTERNET SECURITY SYSTEMS, INC., a
Delaware corporation, INTERNET SECURITY
SYSTEMS, INC., a Georgia corporation, and
SYMANTEC CORPORATION, a Delaware
corporation,

Defendants and
Counterclaim-Plaintiffs.

Civil Action No. 04-CV-1199 (SLR)

JOINT MOTION FOR RULE 54(b) CERTIFICATION

On August 20, 2009, following a jury trial and post-trial motions, the Court (1) granted judgment as a matter of law of non-infringement of the ‘203 and ‘615 patents by defendants Internet Security Systems, Inc., a Georgia corporation, and Internet Security Systems, Inc., a Delaware corporation (collectively, “ISS”); (2) granted judgment as a matter of law of non-infringement of the ‘203 and ‘615 patents by defendant Symantec Corporation’s SGS and Manager products; (3) denied plaintiff SRI International Inc.’s motion for post-trial relief from the jury’s verdict of non-infringement of the ‘338 patent by ISS; and (4) denied all other post-trial motions (D.I. 609 & 610). The Court subsequently entered judgment in favor of SRI against Symantec, and in favor of ISS against SRI with respect to ISS’s counterclaims of non-infringement of the ‘338, ‘203, and ‘615 patents (D.I. 611).

While the issues of damages and willfulness were globally bifurcated prior to trial, the Court’s judgment did not dispose of Defendants’ counterclaims of unenforceability of the ‘338, ‘203, and ‘615 patents or SRI’s claims for injunctive relief, willfulness, or damages with respect to infringement of the ‘203 and ‘615 patents by Defendant Symantec’s Manhunt products. The

parties believe, however, that sound judicial administration and efficiency will be served by an appellate consideration of the infringement and invalidity issues set forth in the Court's August 20, 2009 Memorandum Opinion. Each of the parties has already filed a notice of appeal (D.I. 612, 614, 619).

To ensure that the Federal Circuit has jurisdiction over these appeals and that the appeals are not delayed, the parties respectfully request that the Court grant certification pursuant to Rule 54(b) of the Federal Rules of Civil Procedure by making an "express determination that there is no just reason for delay," and "an express direction for the entry of judgment" in favor of ISS with respect to its counterclaims for declaratory judgment of non-infringement of the '338, '203, and '615 patents; for Symantec with respect to its counterclaims for declaratory judgment of non-infringement of the '203 and '615 patents by the SGS and Manager Products; and in favor of SRI with respect to its claim of infringement of the '203 and '615 patents by Symantec's ManHunt products. The parties request that the Court enter Rule 54(b) judgment for the purpose of ensuring that the District Court's final judgment is appealable to the Federal Circuit. *See Nystrom v. Trex Co., Inc.*, 339 F.3d 1347, 1351 (Fed. Cir. 2003).

Dated: November 11, 2009

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Defendants and Counterclaim-Plaintiffs.

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[PROPOSED] ORDER GRANTING RULE 54(b) CERTIFICATION

On August 20, 2009, following a jury trial and post-trial motions, this Court (1) granted judgment as a matter of law of non-infringement of the ‘203 and ‘615 patents by defendants Internet Security Systems, Inc., a Georgia corporation, and Internet Security Systems, Inc., a Delaware corporation (collectively, “ISS”); (2) granted judgment as a matter of law of non-infringement of the ‘203 and ‘615 patents by defendant Symantec Corporation’s SGS and Manager products; (3) denied plaintiff SRI International Inc.’s motion for post-trial relief from the jury’s verdict of non-infringement of the ‘338 patent by ISS; and (4) denied all other post-trial motions (D.I. 609 & 610). This Court subsequently entered judgment in favor of SRI against Symantec, and in favor of ISS against SRI with respect to ISS’s counterclaims of non-infringement of the ‘338, ‘203, and ‘615 patents.

While the issues of damages and willfulness were globally bifurcated prior to trial, the Court's judgment did not dispose of Defendants' counterclaims of unenforceability of the '338, '203, and '615 patents or SRI's claims for injunctive relief, willfulness, or damages with respect to infringement of the '203 and '615 patent by Defendant Symantec's Manhunt products.

Sound judicial administration and efficiency will be served by an appellate consideration of the infringement and invalidity issues set forth in the Court's August 20, 2009 Memorandum Opinion. Accordingly, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court now makes (a) "an express determination that there is no just reason for delay," and (b) "an express direction for the entry of judgment" as set forth in the "Judgment in a Civil Case." (D.I. 611) The Court is entering this Rule 54(b) judgment for the purpose of rendering a final judgment appealable to the Federal Circuit. *See Nystrom v. Trex Co., Inc.*, 339 F.3d 1347, 1351 (Fed. Cir. 2003).

The Joint Motion For Rule 54(b) Certification is GRANTED.

IT IS SO ORDERED this ____ day of November, 2009.

United States District Judge